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7 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,

Case No.: 2:10-CR-430-JAD-GWF

9 Plaintiff,

10 v.

11 LOMANDO MARK SCOTT,

12 **GOVERNMENT'S MOTION TO**
STAY DEADLINE TO RESPOND
TO 28 U.S.C. § 2255 MOTION,
ECF No. 173.

13

14 Defendant.

15 The United States of America, by and through undersigned counsel,
16 respectfully moves this Court to stay the government's deadline for responding to
17 Scott's 28 U.S.C. § 2255 motion, ECF No. 173. This motion is timely.

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR STAY**

The Federal Public Defender's office (FPD) represented Defendant Lomando Scott prior to trial, on appeal of his motion to suppress, at trial, on appeal of his conviction and sentence, and in seeking certiorari. *See* ECF No. 173 (accusing assistant federal public defenders of providing ineffective assistance).

On November 18, 2015, after the Supreme Court denied Scott's certiorari petition, Assistant Federal Public Defender (AFPD) Nisha Brooks-Whittington asked to be appointed to represent Scott "for the purpose of determining whether the defendant may qualify to seek reduction of sentence and to present any motions or applications for reduction of sentence in accordance with Amendment 782 and 18 U.S.C. § 3582(c)(2)." ECF No. 170. This Court granted that motion on November 19, 2015. ECF No. 172.

On June 29, 2016, Scott filed a 28 U.S.C. § 2255 motion and a memorandum of points and authorities in support of that motion, alleging he received ineffective assistance of counsel from the AFPDs who represented him prior to trial, on the appeal of the motion to suppress, at trial, on appeal of his conviction and sentence, and in seeking certiorari. ECF No. 173.

On December 12, 2016, the Court ordered the government to respond to some of the allegations in Scott's motion. ECF No. 175.

On December 27, 2016, Scott filed a pro se motion to extend time to file a 28 U.S.C. § 2255 motion. ECF No. 176. On January 5, 2017, the Court denied this motion without prejudice because Scott filed this motion pro se, rather than through

1 counsel, and because he needs not file anything until after the government responds
2 to his 28 U.S.C. § 2255 motion. ECF No. 177.¹

3 Based on the allegations in Scott's 28 U.S.C. § 2255 motion, the Government
4 asked the Court to order the attorney/client privilege waived between Scott and the
5 attorneys whom he accuses of ineffectiveness—William Carrico, Amy Cleary, and
6 Alina Shell—and to order materials and information related thereto be divulged to
7 the government. ECF No. 180.

8 The Court granted the government's motion in part and denied it in part. ECF
9 No. 181. It ordered the privilege waived, but declined to order Scott's former
10 attorneys to provide the information requested, holding that “[i]t is the government's
11 job to either request the information that it seeks be turned over voluntarily or to
12 file a proper motion for leave to conduct discovery in which it shows good cause for
13 its specific discovery requests.” *Id.* at 2. The Court set a deadline of March 15, 2017
14 for the government's response. ECF No. 181.

15 On March 6, 2017, the government informed Brooks-Whittington of the
16 Court's January 5, 2017 order denying without prejudice Scott's pro se motion based
17 in part on his represented status, ECF No. 177. On March 7, 2017, Brooks-
18 Whittington filed a motion to withdraw, ECF No. 182, and on March 9, 2017,
19 Magistrate Judge George Foley set the matter for a hearing on March 23, 2017. ECF
20 No. 184.

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22 ¹ Scott subsequently filed another 28 U.S.C. § 2255 motion. See ECF No. 178.
23 The Court has not ordered the government to respond to this second motion, and
accordingly, the government does not currently plan on filing a response to it.

In light of Magistrate Judge Foley's order setting a hearing on the motion to withdraw, the government asks this Court to stay the government's deadline to respond to Scott's motion until five days after the issue of Scott's representation is resolved.

On March 10, 2017, undersigned counsel spoke with Ms. Brooks-Whittington, who indicated that she does have a position with respect to this motion to stay.

DATED this 10th day of March 2017.

Respectfully submitted,

DANIEL G. BOGDEN
United States Attorney

/s/ Adam Flake
ADAM FLAKE
Assistant United States Attorney
501 Las Vegas Blvd S., Suite 1100
Las Vegas, Nevada 89101
Attorneys for United States

IT IS SO ORDERED.


DATED: 3/13/2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing

GOVERNMENT'S MOTION TO STAY DEADLINE TO RESPOND TO 28

U.S.C. § 2255 MOTION, ECF No. 173, was filed and served via CM/ECF upon all counsel of record with the Clerk of the Court for the United States District Court, District of Nevada; and a true and correct copy sent to the Defendant via first-class mail, at the following address:

LOMANDO MARK SCOTT
Reg. No. 29346-048
USP ATWATER
U.S. Penitentiary
P.O. Box 019001
Atwater, CA 95301

Dated this 10th day of March 2017.

/s/ *Tess Recinto*
Paralegal
U.S. Attorney's Office